

STATE OF MICHIGAN
COURT OF APPEALS

RON CHASE, Personal Representative of the Estate
of RICKEY LEE CHASE, Deceased,

UNPUBLISHED
December 30, 1997

Plaintiff-Appellant,

v

No. 196166
Kent Circuit Court
LC No. 92-079726 NO

CONSUMERS POWER COMPANY, et al,

Defendants,

and

GRAND RAPIDS EAST 28TH STREET and
GIFFEN MANAGEMENT GROUP,

Defendants-Appellees.

Before: Griffin, P.J., and Markman and Whitbeck, JJ.

MEMORANDUM.

Following this Court's opinion in Docket No. 175166, remanding this case for reconsideration in light of *Bertrand v Alan Ford, Inc*, 449 Mich 606; 537 NW2d 185 (1995), with respect to application of the open and obvious danger doctrine, plaintiff again appeals by right summary disposition in favor of appellees, the premises owner and property manager. We decide this appeal without oral argument pursuant to MCR 7.214(E).

In remanding for reconsideration, this Court did not attempt to resolve the merits of the controversy. The trial court was under no constraints to proceed to trial, if not justified by the facts and the law. The question to be determined on remand was whether, given that the proximity of the power lines to decedent's work area was open and obvious, absolving appellees of the duty to warn, the danger that remained was sufficiently unreasonable so as to create a triable issue of fact. *Bertrand, supra* at 612.

Decedent was employed by a sign company, whose services were contracted by appellee management company. The work area was the roof of the building, which at the time of injury was exclusively under the control of decedent's employer. As the deposition testimony of decedent's supervisor establishes that decedent had been schooled in the dangers of working around power lines, it is clear that appellees exercised a reasonable degree of care in retaining the services of this contractor to change the sign on the top of the building. Accordingly, appellees, by yielding control of the portion of the premises involved to a carefully selected independent contractor fulfilled their duty of reasonable care to persons such as decedent, who was an employee of the independent contractor. *Funk v General Motors Corp*, 392 Mich 91; 220 NW2d 641 (1974); *Muscat v Khalil*, 150 Mich App 114, 123; 388 NW2d 267 (1986). Any liability for negligence is therefore that of the independent contractor, see *Groncki v Detroit Edison Co*, 453 Mich 644, 664-665; 557 NW2d 289 (1996), for which worker's compensation provides the exclusive remedy in light of the employer-employee relationship. *Muscat, supra* at 124, citing *Dobbs v Journal Co*, 137 Mich App 663; 358 NW2d 32 (1984).

Affirmed.

/s/ Richard Allen Griffin

/s/ Stephen J. Markman

/s/ William C. Whitbeck